

**FOR
AGENDA**

SM/00/255

November 15, 2000

To: Members of the Executive Board

From: The Secretary

Subject: **Proposed Procedures for Cooperation with Investigations on Fund
Activities by Auditing Institutions of Members—Background Paper**

Attached for consideration by the Executive Directors is a paper on proposed procedures for cooperation with investigations on Fund activities by auditing institutions of members, which has been prepared by the staff to provide background information to the statement by the Managing Director circulated as SM/00/97, Revision 1, on June 22, 2000. This subject will be brought to the agenda for discussion on a date to be announced.

Questions may be referred to Mr. Gianviti (ext. 38329) and Mr. Elizalde (ext. 37796).

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Proposed Procedures for Cooperation with Investigations on Fund Activities By Auditing Institutions of Members—Background Paper

Prepared by the Legal, Treasurer's, and Policy Development and Review Departments

Approved by François Gianviti, Eduard Brau, and Jack Boorman

November 15, 2000

INTRODUCTION

1. A revised statement by the Managing Director proposing procedures on cooperation with investigations on Fund activities by auditing institutions of members was circulated to the Executive Board on June 22, 2000 (SM/00/97, Revision 1, 6/22/2000). The procedures had been proposed for adoption on a lapse-of-time basis but at the request of Executive Directors the item was brought to the agenda for discussion. Before its consideration by the Executive Board, the staff was requested to prepare a short background paper addressing the following issues concerning the proposal:

(a) The rationale for the provision in the proposed procedures under which management may make available, upon request by an agency, information that has not been made available to the Executive Board (i.e., information to which the Executive Board has access or to which it may have access);

(b) A discussion of other options, including the requirement of prior Board approval for disclosure of material that has not been made available to the Executive Board;

(c) A discussion of the safeguards envisaged to protect confidential information of Fund members and, in particular, an assessment of the legal status of a confidentiality agreement signed by an Auditing Institution in relationship to its obligations to disclosure to parliament, other bodies or the public under national law, as well as the legal remedies the Fund would have to enforce the written assurances, at least with respect to the members that are most likely to make requests for cooperation with investigations;

(d) Procedures in place in the World Bank (and similar institutions) and the experience of the Bank in this regard; and

(e) Differences between the proposed procedures and those of the Bank, if any, and the reasons for those differences.

2. Section I discusses the rationale for the proposed procedure to make available information to investigative agencies, other possible options and the issue of safeguarding both confidential information and, more generally, the interests of the Fund. Section II will briefly summarize the procedures followed at the World Bank and the differences with those proposed to be followed at the Fund.

I. PROPOSED PROCEDURE AND OTHER OPTIONS

A. Rationale for the Proposed Procedure

3. The proposed procedure is described in paragraph 4(c) of the Managing Director's statement as follows:

In principle only documents and information available to the Executive Board will be made available to the agency. Additional documents and information (other than those relating to the Fund's internal advisory procedures) may be made available by management upon request by the agency, in which case the Executive Board will be notified, and the documents or information will be available to it on the same terms and conditions as to the agency.

4. The proposed procedures on cooperation with investigations of Fund activities by auditing institutions of members will not alter or modify the existing principles applying to confidential information (see, for example, Decision No. 11192-(96/2) on access to archives of the Fund, *Selected Decisions, Twenty-Fourth Issue*, p. 542). Accordingly, (i) documentary material or information provided on a confidential basis (and not subsequently released to the public by its provider) by external persons, including member countries, their instrumentalities, agencies and central banks, to the Fund, the Fund management, or staff, will not be disclosed to any unauthorized person within or outside the Fund, unless the person that provided the material or information consents to its disclosure; and (ii) personnel files and medical or other records pertaining to individuals will not be disclosed to any unauthorized person within or outside the Fund, unless the relevant individual consents to the disclosure. These principles will continue to apply whether the confidential information has been made available to the Executive Board or not.

5. There is a wide array of information and documents available within the Fund. Such information and documents may fall under different categories: (i) nonconfidential information; (ii) confidential information provided by members or other persons on the understanding that it will only be available to management and staff on a need-to-know basis; (iii) confidential information provided by members or other persons to the Fund staff and management on the understanding that it will not be disclosed outside the Fund; (iv) confidential staff analysis, made available to the Executive Board, that could have an impact on markets; (v) Executive Board minutes, and other unpublished documents reflecting the views of Executive Directors; (vi) staff papers for the Executive Board; (vii) internal staff documents such as memoranda to the management of the Fund or staff-to-staff memoranda;

and (viii) confidential information of a personal nature, such as personnel and medical records of Fund employees.

6. Nonconfidential information in category (i) is not always made available to the Executive Board, except upon request, because it may be deemed not necessary to the Executive Board's work. The amount of such information may be rather substantial and it would be literally impossible to make the Executive Board aware of all such available information. Under current practice this information, whether previously communicated to the Executive Board or not, may be made available by the management of the Fund in response to inquiries. It would be consistent with current practice to leave with management the decision to accede to requests by investigative agencies for nonconfidential information, even if this information has not been previously communicated to the Executive Board.

7. Information in category (ii) could not be made available to Executive Directors or to persons outside the Fund without the consent of the member or other person that provided the information because it has been provided on that condition. The same is true of information in category (iii) with the only difference being that the restriction only applies to persons outside the Fund, not to Executive Directors. In both cases, absent the consent of the member or other person that provided the information in the first place, the information cannot be made available outside the Fund and there would be no point in requesting the authorization of the Executive Board to that effect since, in any event, the Board would have no authority to authorize its release. In contrast, if the consent is given, a decision of the Executive Board to deny a request for disclosure by the Fund would have no practical effect as the information could be obtained from its source; therefore, under the proposed procedures, this information could be provided by the management of the Fund.

8. Documents in categories (iv) and (v) would be available to an investigative agency. However, under the proposed procedures, confidential information so communicated (e.g., views expressed by Executive Directors or market/politically sensitive information), could not be disclosed by the agency (see paragraph 4(b)(ii), first bullet, of the procedures).

9. Documents in category (vi) are already available to Executive Directors. They would be communicated to investigative agencies unless they contained information within category (ii) or (iii), in which case the prior consent of the member or other person that provided the information would be necessary.

10. Documents in category (vii) may already be released by management, subject again to the same qualification regarding information provided on a confidential basis and the exclusion of information arising from the internal advisory procedures of the Fund (i.e., those related to the internal review process).

11. Information in category (viii) would not be expected to be requested by investigative agencies. In any case, it could not be disclosed without the consent of the person concerned.

12. In conclusion, the proposed procedures would essentially reflect existing practices. Moreover, any information not previously made available to Executive Directors would, if communicated to an investigative agency, also be made available to Executive Directors. At no time, therefore, could management make available to an agency information that is not being made available to the Executive Board. Nor would management make available to an agency documents or information that have been provided on a confidential basis by a member or other person without the consent of such member or other person.

B. Other Options

13. An alternative procedure with respect to material not previously communicated to Executive Directors could be considered. First, management would decide whether the information requested could be made available to a requesting agency (either because it may be released by management without Executive Board approval—categories (i) and (vi)—or because the member or person that provided the information consents to its release). Second, if in management's judgment the requested information could be made available, it would submit the request, and the information, if not previously communicated to the Executive Board, for a decision by the Board on its release to the requesting agency. If management decided to deny a request, the Executive Board would be so informed in accordance with paragraph 4(d) of the proposed procedures and could decide whether or not the information should be disclosed.

14. This option would raise a number of problems. First, it would be contrary to current practice, under which staff may answer questions and provide nonconfidential information with management approval. Second, as explained above, there would be no point in denying a request for confidential information obtained from a member or other person if such member or person had consented to its release. Third, every request would require the preparation of documents for Executive Board consideration, which seems to be contrary to the desire to streamline.

C. Safeguards

Safeguards on confidential information

15. The first safeguard with respect to confidential information provided by members or third persons is that, as indicated under paragraph 4, no such information will be communicated to an investigative agency without the relevant member's or person's consent. The second safeguard is that, for a request to be met, the investigative agency will have to provide written assurances that confidential information, provided by members or third persons, included in Executive Board documents or staff memoranda, made available in the course of the enquiry will not be disclosed. The third safeguard is that the investigative agency will have to provide written assurances that management and staff will be given an opportunity to review any report resulting from the enquiry before its circulation outside the

agency to ascertain, inter alia, that no confidential information is being disclosed in the report.

16. On the basis of its immunities and privileges, in particular Article IX, Sections 4 and 5 of the Fund's Articles of Agreement, the Fund has the right to expect that documents of the Fund provided to members, their branches, agencies or instrumentalities, that are not for public use, will be regarded and treated as restricted or confidential by the recipients to whom such documents have been provided. All Fund members have made the provisions of Article IX part of their national laws.¹

17. If documents of the Fund are thus provided to an investigative agency of a member, the Fund has the right, and is entitled to obtain, assurances concerning the preservation of their confidential character on the basis of Article IX, Sections 4 and 5 of the Fund's Articles of Agreement. If such assurances are not given, the Fund has the right to withhold the requested information. In addition, auditing standards by investigative agencies generally recognize the need to keep privileged and confidential information from general disclosure, in which case the auditors should report the nature of the information omitted and the requirement that makes the omission necessary.

18. An investigative agency, if requested by a Congressional Committee or a Court of Law, may be legally obligated to disclose to such Committee or Court information that was not included in a report by the agency made available to the public. That information, however, will continue to be protected information and should be handled as such by any recipient. In the end, however, there are no watertight systems of protection of confidential information and the larger the group of recipients of such information the likelier it is that leaks may occur. In that event, there may not be legal remedies available to the Fund other

¹In the case of the United States, Article IX, Sections 2 through 9 of the Fund's Articles of Agreement have been given full force and effect by Section 11 of the Bretton Woods Agreements Act (P.L. 171, 79th Congress, 59 Statutes at Large, page 512 et seq., approved July 3, 1945, 22 USC, Section 286(b)). Moreover, for purposes of the International Organizations Immunities Act (P.L. 291, 79th Congress, 59 Statutes at Large, page 669 et seq., approved December 24, 1945, 22 USC, Section 288 to 288(f)), the Fund, by Executive Order 9751 of July 11, 1946 (11 Federal Register, page 7713), has been designated as a public international organization entitled to enjoy privileges and immunities under the International Organizations Immunities Act. In accordance with these privileges, classified documents received from foreign governments and international organizations by the Executive Branch of the Government of the United States are exempt from the disclosure requirements of the U.S. Freedom of Information Act. The Fund in releasing documents to the Executive Branch of the United States Government has the right to rely on this exemption.

than those provided by Article XXVI, Section 2 of the Fund's Articles if a member were to be found in violation of one of its obligations under Article IX. Another possible remedy is the discontinuation of further cooperation with the auditing institution of the member when there are no assurances that confidential information provided by the Fund will be protected.

Protection of the Fund's interests

19. To avoid one-sided presentations, reports prepared on Fund activities by audit institutions should accurately reflect the views expressed by management and staff. Therefore, management and staff should have adequate opportunity to review such reports. Adequate opportunity to review encompasses two important elements, one of timing and one of substance. With regard to timing, management and staff should have the opportunity to review any reports, whether in draft or finalized form, **before** such reports are circulated beyond the audit institution. With regard to substance, in cases where there are differences of views, the views expressed by management and staff should be reflected in their entirety to avoid the potential for misrepresentations that would arise from summarizing their views.

II. PROCEDURES FOLLOWED BY THE WORLD BANK

20. Over the past several years, the Bank has been subject to an increasing number of unilateral audit requests by audit institutions of members—in particular, from the U.S. General Accounting Office (GAO). The Bank has generally accommodated these audit requests as part of its accountability framework to its shareholders and in the interest of transparency.

21. In the 1990s, a process was developed to inform the Executive Board of the Bank of new audit requests and to oversee the audit work to ensure compliance with the Bank's disclosure policy. This process included:

- Channeling the audit through the respective Executive Director;
- Informing the Board through written notice of any such request;
- Providing the audit institution information that is already available to the Board in compliance with existing Bank policies regarding the disclosure of information and documents. Information requested in the course of an audit that had not been previously distributed to the Executive Board and that management determined was not sensitive or confidential was made available to all members; and
- Coordinating appropriate Bank representation at meetings related to the audit by having a representative from Bank management and from the respective Executive Director's office attend all the meetings.

22. Audit institutions have relied, for the most part, on the information already available to the Bank's Board, making these audits tantamount to the Bank's normal discharge of information sharing with the Executive Directors in line with the Bank's policy to be accountable to the shareholders. More recently, the information needs associated with some of these audits have expanded to include requests for access to the Bank's confidential information not available under the Bank's disclosure policy. Increasingly frequent audit requests and need for access to confidential information have raised several concerns at the Bank involving the protection of the multilateral nature of the Bank, the Bank's confidential information, and costs to the Bank of these audit requests. This practice also raises the issue of how accountable the Bank needs to be to the public in general when its shareholders are the governments of the world, and also questions the validity of the Bank's governance structure. In response to a specific request made in 1998 by the GAO that extended beyond the boundaries of the Bank's disclosure policy, the Bank's Audit Committee (a Committee of the Executive Board of the Bank) requested that management create on a pilot basis an external advisory group, the Multilateral Audit Advisory Group (MAAG), to ensure that the principles of multilateralism and the confidentiality of the Bank's information were protected. The group was tasked with advising the Audit Committee and ensuring compliance with the agreed terms of reference of that review, ensuring adherence to the ground rules and providing objective comment on the audit report.

23. Building on the experience of that review, the Bank management prepared a paper entitled "*A Framework for Audits by The World Bank Group Members' Supreme Audit Institutions (Discussion Draft)*" (AC2000-60). The paper outlined the issues, principles, and options for handling requests for audits by the Bank's shareholders' audit institutions. In its discussion of the paper, the Audit Committee agreed with its thrust and requested an additional paper building on its consideration of the discussion draft. The Audit Committee considered the additional paper on October 30, 2000 and generally endorsed the proposed framework. The Committee agreed that Bank management should prepare a final proposal for Board consideration.

24. The new paper proposes a framework that comprises the following:

- An oversight system encompassing the Board through the Audit Committee, management and the MAAG;
- Clear criteria defining the roles of the Board through the Audit Committee, management, and the MAAG;
- Conditions for cooperation with requests of audit institutions of members;
- A protocol outlining rules of engagement applicable to all audit institutions of members, including assurances as to confidentiality, clear terms of reference, and adherence to procedures (Annex I); and
- Central oversight by management of all requests by audit institutions of members.

25. The type of oversight proposed for audits by audit institutions of shareholders will depend on the categories of audits defined as follows:

- **Category I—Normal Information Sharing.** Requests for information that are consistent with the Bank’s disclosure policy will fall under this category. Management will respond to these information requests by providing the information. These requests will not involve the Board or the MAAG but there will be a twice yearly activity report to the Audit Committee listing each information request.
- **Category II—Audits of the Bank or Bank Programs.** These audits carry greater sensitivities. Management will inform the Board of these requests and, if there is no objection, management will be responsible for oversight and decision-making on the audit. If there is objection, a meeting of the Audit Committee will be called to further discuss the request. In these cases the Audit Committee, with input from management, will provide ongoing oversight of the audit and will refer to the Board those matters that require Board decisions. Management will provide day-to-day supervision. Use of the MAAG to provide technical advice on audit issues will be at the discretion of the Audit Committee.
- **Category III—Audits Involving Confidential Information.** In these cases the Board will decide on the request based on the recommendation of the Audit Committee. In all other respects, the oversight procedures are the same as those of Category II, but with mandatory use of the MAAG, requiring the latter to be involved in all details of the audit.

26. The paper outlined three considerations for cooperation with SAI requests as the Bank intends to first and foremost rely on its own institutional governance framework to satisfy questions on its accountability to shareholders:

- The audit does not duplicate efforts already undertaken at the Bank;
- The Bank’s oversight units cannot undertake the audit; and
- The scope of the audit is expected to add value to the Bank and all its shareholders.

27. The procedure proposed at the World Bank is broadly similar to the proposals under consideration at the Fund. The differences include (i) the use of an external advisory group (the MAAG) for certain types of audits, (ii) a direct role of the Bank’s Audit Committee (which in the case of the Bank is a Committee of the Board) and of management on the oversight of these audits, depending on their nature, (iii) a more direct role by the Executive Board in the determination as to whether or not to cooperate with requests, and in resolving issues arising during the course of the audits, and (iv) on having a list of “conditions for cooperation” as mentioned above.

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ANNEX II:
PROTOCOL ON RULES OF ENGAGEMENT
FOR ALL SAI AUDITS

1. A protocol outlining the rules of engagement for SAIs in the conduct of their work at the World Bank is a cornerstone of the SAI oversight framework. This protocol will be applicable to all SAIs uniformly and equitably. The following outline provides some detail of the types of process issues which a protocol would address. A more comprehensive protocol will be developed once the SAI framework is endorsed.
2. **Primary contact is the Executive Director.** SAIs will always initiate any requests for audits through their respective Executive Director.
3. **Terms of Reference.** In advance of any decision of cooperation, the SAI will furnish the Bank a detailed terms of reference, outlining in detail the scope and methodology of the audit, including anticipated information needs. The Bank reserves the right to request additional clarification or precision on the terms of reference. If, after the start of the audit, the Bank detects any departure from the stated Terms of Reference, such as a change in the nature of the information requested or scope of audit, such change will trigger a review of the audit and a possible revision to the stated category of the audit.
4. **Protection of the Bank's confidential information.** The SAI must provide written assurances that all information obtained in the conduct of the audit will be used in a manner consistent with the Bank's Disclosure Policy and that confidential information will not be disclosed either in its report or in any other context. To the extent that confidential information is provided, such documents will remain on Bank premises, and all related notes and audit materials will remain the property of the Bank and held by the Bank.
5. **Contacts with Staff.** Requests for discussions with Bank staff will be channeled through the responsible Executive Director's office to the central facilitator for Management. SAIs will inform Bank headquarters in advance of any requests for access to staff in the Bank's resident missions.
6. **SAI Audit Report.** The SAI agrees to provide Management an advance copy of their draft audit report to allow the Bank an opportunity to review such draft for factual accuracy. Where the Bank is the subject of the audit, the Bank will provide formal written comments in response to the draft audit report and the SAI agrees to incorporate such comments in their entirety in their report.
7. **MAAG.** In such cases where the MAAG is invoked, the SAI agrees to cooperate in the MAAG's pursuit of its work. In this context, the SAI agrees to periodically meet with MAAG representatives to discuss the progress of the audit and audit report.

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8. The SAI agrees to adhere to the protocol. Acceptance of such protocol by the SAI will be a prerequisite to the Bank's cooperation on any audit request.